

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF INTEGRATED RESOURCE)
PLANNING FOR THE PROVISION OF)
STANDARD OFFER SUPPLY SERVICE BY)
DELMARVA POWER & LIGHT COMPANY UNDER)
26 DEL. C. § 1007(c) & (d): REVIEW) PSC DOCKET NO. 07-20
OF INITIAL RESOURCE PLAN SUBMITTED)
DECEMBER 1, 2006)
(OPENED JANUARY 23, 2007))

Petition for Interlocutory Review of Petition for Intervention of Jeremy Firestone

1. On February 20, 2007, I filed electronically and mailed for filing my intervention petition in this matter.
2. As noted in that petition, “reading the definitions of “party” and intervenor” under Commission rule 2 with the rule 21 standard for intervention together suggests that the “direct” interest test in the definition of “party” is met for an intervenor if that individual has an interest and (a) that interest will not be adequately represented by the “parties” to the proceeding **OR** (b) it would be in the public interest for that individual to participate in the proceedings.”
3. Five other persons/entities also sought to intervene. Alan Muller a/k/a Green Delaware, the Sustainable Energy Utility Task Force, Maryanne McGonegal, Bluewater Wind and NRG.
4. No objections were filed to my petition.
5. I sought to intervene to protect my environmental; recreational; human health; aesthetic; well being, and economic interests, including my interest in stable electric rates and the reliability of electricity; and, citing my work in the RFP docket, to advance fair and open decisionmaking that serves broad public policy goals. I cited concerns regarding climate change as well.
6. Mr. Muller in his intervention petition more narrowly sought to protect his interests in human health, the environment and quality of life.
7. Unlike me, Mr. Muller is of the opinion, that all power bids should be rejected. He was quoted in the Daily Times, <http://www.delmarvanow.com/apps/pbcs.dll/article?AID=/20070228/DW01/702280326/-1/DW>, as stating that "I think there's a certain amount of momentum here that's been built up regarding clean power and we need to figure out how Delaware can move ahead with that," he said. "I think we need to go ahead with wind power, but I don't think this is the way to do it."

8. Ms. McGonegal cited environmental and human health concerns in her petition for leave to intervene.
9. Both Bluewater and NRG intervened to protect their economic interests and both were granted intervention status individually.
10. Bluewater and NRG interests are more in line with one another's than my interests are with Mr. Muller's and Ms. McGonegal's.
11. A review of the Sustainable Energy Utility Task Force (SEUTF) petition indicates that it does not conform to Rule 21, yet as noted below, it was granted intervention status.
12. According to its website, SEUTF seeks to "serve the near- and long-term economic, social and environmental interests of our State." <http://www.seu-de.org/background.html>.
13. As Senator McDowell opposes the RFP process, yet is supportive of wind power (as stated in his letter filed in the RFP proceeding), Mr. Muller's interests are more in alignment with SEUTF's than with mine.
14. By email dated March 1, 2007, Senior Hearing Examiner O'Brien submitted his ruling on this matter. He indicated that:
 - a. Petitions to intervene for Bluewater and NRG were granted.
 - b. Ms. McGonegal and Mr. Muller did not comply with the filing requirements for petitions to intervene.
 - c. The Sustainable Energy Task Force would be granted intervention.
 - d. That Mr. Muller, Ms. McGonegal and I were granted intervention "under certain conditions" to represent their interests in the environment and public health. As noted above, my interests as set forth in my petition are significantly broader.
 - e. "Because their interests in the IRP as Delaware residents concerned with the environment are substantially the same, Dr. Firestone, Mr. Muller and Ms. McGonegal may act as one party, with one voice. As such, they will submit one filing with each deadline and will appear as one party at all proceedings. In this way, we will not have parties whose interests are represented by other parties (as referenced in Rule 21(a)(iii)) and we can avoid duplicative submissions and responses throughout the life of this docket."
15. The Hearing Examiner proscribed such conditions pursuant to rule 21(d), which permits only reasonable conditions to be placed on intervention.

16. The conditions are patently unreasonable and infringe on my First Amendment rights.
17. It is arbitrary and capricious to grant the SEUTF individual intervention status, but not myself.
18. It is unjust to grant individual intervention status to SEUTF, who did not comply with rule 21, while lumping me with others.
19. It is arbitrary and capricious to lump me with others, but not NRG with Bluewater Wind.
20. By email dated March 2, 2007, I requested reconsideration of the ruling in part because I had sought intervention both because my interests were not adequately represented by any other party AND because my intervention was in the public interest. Intervention is permitted upon a showing under either ground.
21. By email dated March 2, 2007, my request was denied. Senior Hearing Examiner O'Brien stated that he had "addressed the "public interest" standard under Rule 21(a)(iii), albeit not by citation, when I stated that joining the three Delaware residents concerned with the environment into one party would avoid duplicative submissions and responses throughout the life of this docket. The inefficiencies resulting from permitting three separate Delaware-resident-concerned-with-the-environment parties would run contrary to the public interest."
22. The Hearing Examiner has conflated the two bases for intervention, essentially holding that since my interests are adequately represented by Mr. Muller and Ms. McGonegal, it would not be in the public interest to allow me to proceed separately.
23. Nothing in rule 21 states that you cannot have more than one party representing the same interest each having their own voice
24. As noted above, rule 21 provides for intervention even in those cases where one's interests are adequately represented by another, if that party's intervention would be in the public interest.
25. As set forth in my petition, my individual participation is in the public interest.
26. Further, for the reasons noted above, my interests are broader and different than Mr. Muller's and Ms. McGonegal's and thus, they cannot adequately represent my interests. I will not agree to either Mr. Muller or Ms. McGonegal taking the lead in this matter.
27. Further, as a licensed lawyer, my taking the lead in this matter may create the impression among some members of the public or press that I represent Mr. Muller and Ms. McGonegal.
28. While Mr. Muller is an able advocate for his position when expressing that position calmly, given his demeanor in front of this Commission at other times, I would not represent him for \$200/hour let alone *pro bono*.

29. Since the filing of the Hearing Examiner's ruling in this matter, Mr. Muller has suggested in writing that I did not act in good faith in inquiring as to whether he was intervening on his own behalf or on the behalf of Green Delaware. That inquiry was made based on his petition in this matter identifying himself as the Executive Director of Green Delaware and noting that he had actively participated in the RFP proceedings. In those proceedings he often addressed the Commission by identifying himself as being with Green Delaware. This followed an earlier email where Mr. Muller cautioned me against "colluding" with Ms. McGonegal in this matter. I have no desire nor am I able to work with Mr. Muller.
30. The extraordinary circumstances necessitate a prompt decision by the Commission to prevent substantial injustice or detriment to the public interest.
31. The Senior Hearing Examiner acted arbitrarily and capriciously, abused his discretion, and otherwise acted not in accordance with law.

I thus respectfully request that this Honorable Commission

1. Grant this Interlocutory Appeal and sever my intervention petition and grant me intervention status in my own right and stay the IRP proceeding pending review of this question.

Or, in the alternative

2. Dismiss the intervention petitions of Mr. Muller and Ms. McGonegal as improperly filed and the intervention petition of the SEUTF as being inconsistent with rule 21, and then grant me intervention in my own right.

Or, in the alternative

3. Or in the event this Commission decides it is otherwise proper to lump petitions, join Mr. Muller and Ms. McGonegal with the SEUTF and join Bluewater Wind and NRG and permit me to proceed independently.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeremy Firestone". The signature is fluid and cursive, with the first name "Jeremy" written in a larger, more prominent script than the last name "Firestone".

Jeremy Firestone
2 March 2007